

REMARKS

Applicants acknowledge receipt of the Examiner's Office Action dated June 23, 2008 having a shortened statutory period ending September 23, 2008. Claims 1, 15 and 33 have been amended.

Rejections under 35 U.S.C. §102

Claims 1, 9, 15, 23, and 32 are rejected under 35 U.S.C. §102(e) as allegedly being anticipated by Eshel et al., U.S. Publication No. 2003/0158862 (Eshel). While not conceding that the cited references qualify as prior art, but instead to expedite prosecution, Applicants have chosen to respectfully disagree and traverse the rejection as follows. Applicants reserve the right, for example, in a continuing application, to establish that the cited references, or other references cited now or hereafter, do not qualify as prior art as to an invention embodiment previously, currently, or subsequently claimed.

Applicants respectfully submit that “[a] claim is anticipated only if each and every element as set forth in the claim is found, either expressly or inherently described, in a single prior art reference.” *Verdegell Bros. v. Union Oil Co. of California*, 814 F.2d 628, 631, 2 USPQ2d 1051, 1053 (Fed. Cir. 1987).

Applicants have amended independent Claims 1, 15, and 33. Support for the amendments can be found in at least paragraph [0009] of the present Specification. Nothing in the cited passages of Eshel discloses, teaches or suggests “the first and second data volumes are contemporaneous primary data volumes,” as recited in independent Claims 1, 15, and 33. Thus, Eshel does not disclose, teach, or suggest each and every element as set for in independent Claims 1, 15, and 33. Independent Claims 1, 15, and 33 and all dependent claims are therefore patentable over Eshel. Applicants respectfully request that the rejection be withdrawn.

Rejections under 35 U.S.C. §103

Claims 4-5, 8, 10-12, 18-19, 22, and 24-25 are rejected under 35 U.S.C. §103(a) as allegedly being unpatentable over Eshel as applied to Claims 1, 8, 15, 23, and 33 above, and in view of “Veritas Flashsnap Point-in-Time Copy Solutions” (dated June 24, 2002) (Veritas). Veritas is not cited as disclosing independent Claims 1, 15, or 33. Thus, Claims 4-5, 8, 10-12, 18-19, 22, and 24-25 are patentable over Eshel and Veritas, taken alone or in any permissible combination by virtue of their dependency on allowable independent Claims 1 and 15. Therefore, Applicants respectfully request that the rejection be withdrawn.

CONCLUSION

Applicants submit that all claims are now in condition for allowance, and an early notice to that effect is earnestly solicited. Nonetheless, should any issues remain that might be subject to resolution through a telephonic interview, the Examiner is requested to telephone the undersigned.

If any extensions of time under 37 C.F.R. § 1.136(a) are required in order for this submission to be considered timely, Applicant hereby petitions for such extensions. Applicant also hereby authorizes that any fees due for such extensions or any other fee associated with this submission, as specified in 37 C.F.R. § 1.16 or § 1.17, be charged to deposit account 502306.

Respectfully submitted,



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